



## JUDGMENT

OF

## US HONOR JUSTICE RITCHIE,

IN THE CASE OF THE

APTORS OF THE AMERICAN STEAMER

CHESAPEAKE.

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## JUDGMENT

HIS HONOR JUSTICE RITCH In the case of the captors of the American Steamer Chesapeake.

IN RE

DAVID COLLINS. JAMES MCKINNEY. selbed and and LINUS SEELY.

Prisoners confined in the Common Gaol of the City and County of Saint John.

This was an application made to me on be-Magistrate for the City of Saint John, and half of the above named prisoners, under the dated 25th Eebruary, 1864, and is directed to "An Act for better securing the liberty of the County of Saint John, and to the Kesper of the Subsect!" and sufficient cause having been Jail, whereby the said Constable is directed to shown to me, I did, by order in writing, reconvey said parties in the words of the Warquire and direct the Keeper of the Jail of the ront "charged by me," H. T. G. Eig, P. M. of City and County of Saint John to return to lice, and one of H. M. J. P. for Sc., acting unmarked the said parties were detained for a Warrant under the hand and seal of Hi in passes, together with the day and cause of Excellency the Honorable Arthur, Hamilton that having been taken and detained; to which Gordon, C. M. G., Lieutenant Governor and crust the Sheriff of the City and County of St. Commander in Chief of the Trovince of N. B. John, the keeper of said Jail, returned to me lieuting date the 24th day of December, A. D. that the said parties were confined in the said 1863, and made and issued in presume of the Jail under a warrant from Humphrey T. Gil-Act of the Imperial Parlament, entitled "An bests Police Magistrate and Justice of the Act for giving effect to a Treaty between Her Peace for the City and County of Saint John, Majesty and the U. S. A. for the apprehension from the following dates: the Kinney from in accordance with the said Treaty and Act the 28th of December; and Seelyffron the left Requisition having been made to His Excellenday of January last past, except when ordered by on behalf of the said U. S. A. by J. Q. for caumination, by the said Magistrate, up to Howard, Consulof the said U. S. A. at the City of Landard to the Office of the Saint John, Pravince of N. B. staffing that the said facilities and the said Saint John, Pravince of N. B. at the City of the saint of the saint John, Majer and Languary, then instant, where they folk the saint John Landard to t This was an application made to me on be-Magistrate for the City of Saint John. half of the above named prisoners, under the dated 25th Eebruary, 1864, and is directed to

ed to all and every the Justices within the money of N. B., having on board a cargo of Province of N. B., and is as follows, (here fol-the value of \$80,000 of like lawful money, and lows the copy of the Warrant) which Warrant the said vessel being then on a voyage from the after reciting the enacting part of the 1st Sec. port of New York in the U. S. A. to the port of of the Act of Parliament 6 and 7, Vic. Cap. 71, Portland in the said U. S. A., and having then proceeds to recite that in pursuance of, and in and there piratically, feloniously, wilfully and accordance with, the said Treaty and Act, a maliciously put the said Issae Willets and Requisition had been made, as before set forth, others the crew of the said vessel in fear and then proceeds: -" Now know ye, that and danger of their lives on the high acas pursuant to the powers in me vested, in and aforesaid, and having there and then maliciousby the said Act of Parliament, I do hereby by ly, wilfully, feloniously and piratically taken this Warrant, under my hand and seal, sig-possession of the said vessel and cargo thereof; nify that such Requisition has been so made, and with having then and these feloniously. and hereby require and command all Justices wilfully, maliciously and piratically stolen and of the Peace and other Magistrates, and other taken the said vessel and cargo upon the high seas aforesaid; and also for having at the time their several jurisdictions, to govern themselves accordingly, and to aid in apprehending the said parties (naming them as before) so accused, and committing them (naming them) it is a foresaid kiled and murdered one Orin Schaffer to Justice according to the provisions of the said stofer having at the time and place aforesaid kiled and murdered one Orin Schaffer in and on board said vessel on the said vivysky, to Jail for the purpose of being delivered up and also for having at the time and place aforesaid with force and arms feloniously, wilfully, said Treaty; and hereof they will fail at their maliciously and piratically assaulted a woundperil." And the Watzant of the said H. T. ed one Chas. Johnston; and also for having at the time and place aforesaid seloniously, wilfully, maliciously, and piratically assaulted as wounded one James Johnston, and to be dead.

Act of Parliament, he did examine Issae Wil-, with according to law, she said complaint hereceips of such Warrant, and acting under and fully, maliciously, and paratically assaulted and by struct thereof, and in pursuance of the said wounded one James Johnston, and to be deal act of Parliament, he did examine Isaac Willless under oith touching the truth of the said with according to law, she said complaint here in the work of the said Warrant; and upon the evidence of the said Warrant; and upon the evidence of the said Willets, in pursuance under the hand and Seal of His Excellency as, of the said Act of Parliament, he did on the 25th day of December last issue a Warrant under the hand and seal for the apprehension of the said said in pursuance of the Act of the last said and seal for the apprehension. Upon the charges aforesaid, a sopy of which warrant is then set out. It is astered and in pursuance of the Act of the Imperior of the December of the City and County of Saint and proceeds: "Apprehend, John C. Braine and the parties before named, John C. Braine and the parties before named, John C. Braine and the City of Saint John, to anat, and I having breezeded to the five said warr, the complaint of Isaac Willets of the charge of Piracy charged appears of the charge of Piracy charged appears on the high seas, about twenty miles North for the Act of New York, in the United States of the examination of the witnesses of the said arms, maliciously, wilfully, feloniously and piralically made an assault upon the said upon the examination before and arms, maliciously, wilfully, feloniously the first of the wild arms, maliciously, wilfully, feloniously the parties of the said Act of the limit of the City and long and in charge and command of the City and Long and in charge and command of the City and Long and in charge and command of the City and Long and in charge and command of the City and Long and the charge of the said seven the mile Country the said parties of the said arms, maliciously, wilfully feloniously the country of the Maliciously and piralically made an assault upon the said season of the Coun December Secret Chesternic cel tel se il

and arme and pirat Isaac Wi boat or ve vessel bei and regist laws of su B.Cromw of the v of N. B., value of port of N of Portlar then and and mali and other and dang mid, and willfully. seusion of and havi and take

> you the a ered pun On thi appointed plication on the af ed by the require ! of all the and J. P. the Lieu 1863, the and prop able me and I di be forth notice th ings and the War ant Gov Mr. Gut prisoner the part and all

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seas afor purguant THE CHESAPEAKE TRIAL.

and arms maliciously, wilfully, feloniously at the City of St. John, upon which the Way-and piratically made an assault upon the said rant of His Excellency was issued, and of the laws of such States, and belonging to one Henry charge at length on which the examination be-B Cromwell a citizen of the U.S.A., and being fore Mr. Gilbert proceeded. of the value of \$60,000 of lawful money The Consul's letters are as follows: of the value of \$60,000 of lawful money

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awe of such States, and belonging to one Henry of N. B., conwell a citizen of the U. S. A., and being the value of \$60,000 of lawful money of N. B., and having on board a cargo of the called of \$80,000 of the lawful money, and the said vessel being thein on a voyage from the port of New York in the U. S. A. to the port of Port Work in the U. S. A. to the port of Port Work in the U. S. A. and having the nand there piratically, felonically, willfully and maliciously put the said Issae Willers and chers the crew of the said vessel in fear and danger of their lives on the high seas afore, and danger of their lives on the high seas afore, and danger of their lives on the high seas afore, and danger of their lives on the high seas afore, and having them and there maliciously, willfully, felonically and piratically taken possession of the said vessel and the cargo thereof, and having them and there felonically stolen and taken the vessel said cargo upon the high seas aforesaid, are of remain until felivered pursuant to the Requisition as aforesaid; and of them upon the said charge until delivered pursuant to such request as aforesaid.

On this return being made to me at the time appointed for the hearing of this matter, on application made on behalf of the said prisoners on the sifidavit of David Collins, I did. in pursuance of the power and authority in me verificate, and direct a return to be made to the constance. The same being decision of the said state of the said prisoners are the proceedings, examinations, order and depositions takes before H. T. Gibr. S. M. and J. F., &c., under and by virtue of a Warrant purporting to be issued by His Receivers, the law in surposite the said prisoners and in the proceedings of the said parties; and I directed that no fick at the prisoners and the proceedings of the said parties; and I directed that no fick at the said prisoners, including copies of the original parties, and I directed that no fick at the said prisoners, the said counters before him, the said prisoners, the f

Issae Willets and others the mariners then on original depositions of Issae Willets and Danie board and in charge and command of the steam- Henderson transmitted by the said Consul with boat or vessel named the Chesapeake, the said one of the said letters, duly certified agreeably vessel being a vessel belonging to the U.S.A. to the Act of Assembly, under the hand of the and registered in the U.S.A. according to the Hon.S.L. Tilley, Provincial Secretary, and the

be thrown in the way of bringing those charged other witnesses (naming them) taken in the

City of Saint John, "on the 23nd Jee, 1885, the Jord does not say where. The depositions are headed. "Frevince of New Brunswick, City and County of St. John, to wit," and commence "heaze Willest of the City of New York. United States of America, Saptain of the States of America, Saptain of Saptain of the States of America, Saptain of Saptain of the States of America, Saptain of Sapta

be thrown in the way of bringing those charged other witnesses (naming then) taken in the with so grave an offence to justice.

We had to first out that a Requisition before the Encounty would not have been such a consult.

The depositions transmitted with one of these letters professed to have been sworn before "H. T. Gilbert, Police Magistrate of the City of Saint John," on the 22nd Dec., 1869, the Jurest does not say where. The depositions are headed. "Province of New Brunswick, City of Saint John," to wit," and com-The standard of the wind of the standard of th

Requisition of J. Q. Howard, Esq. U. S. Consulf

It is to be stocerely hoped that no obstacles wi

ers ass1 vigation feloniou they the the said same o laws of Statute Britain The their de

objectio ings in by the Fire against or in tioned Jurisdi proper United soners, thority his Wa Seco not, eit Saint J City an to exan Piracy the per Thir tion, th offence not gui was no to the Fourt rong fully e compla ernor's and un ed is b justify The Her su are all restrai Corpus the St

which means impro Her M of the

Britain and Ireland."

The prisoners by their Counsel claim that must be discharged.
their detention is illegal, and a great variety of The Treaty under which the delivery up objections were urged at length to the proceed-to the United States Government of the

ers assisting the said Istac Willets in the national and to investigate all cases of alleged unlaw-vigation of the said steam vessel, piratically and ful arrest, and to relieve therefrom, if shown to fefoniously did steal, take and run away with be controry to law. The right to great such they the said David Collins, James McKinney, relief in this case, has not been, and cannot be and Linus Seely being passengers on board questioned. Having then all the proceedings the said steam vessel, in and on board the before me I have to ascertain and determine same on the high seas aforesaid, against the whether or not such proceedings are justified laws of the United States of America and the by and in-conformity with the Treaty and Act Statutes of the United Kingdom of Great of Parliament. If they are, this application must be dismissed. If they are not the prisoners be dismissed. If they are not, the prisoners

ings in this case. They are all I think covered prisoners is sought is a Treaty ratified on the 13th of October, 1842,—"to settle and First, that there was no legal charge define the Boundaries between the possessagainst the prisoners in the United States some of Her Britannic Majesty in North or in this Province of an offence men-America and the Territories of the United States, nor any can Slave Trade, and for giving up Criminals, proper Requisition by the authority of the fugitives from Justice, in certain cases." The United States for the rendition of the prisoners, and therefore the Governor had no authority under the Treaty and Statute to issue as it is found expedient for the better administration of Justice and the prevention of orime tratted.

thority under the Treaty and Statute to issue thority under the Treaty and Statute to issue thority under the Treaty and Statute to issue that the Treaty are the Treaty and Statute to issue secondly—That if he had, Mr. Gilbert had not, either as Police Magistrate for the City of two parties respectively that persons committing and County of Saint John, any authority to examine touching the truth of the charge of Piracy alleged in the Warrant, or to commit the persons accused thereof.

Thirdly—That if Mr. Gilbert had jurisdiction, the evidence before him showed that the United States shall, upon mutual requisitions by them or their ministers, officers, or assault with intent to commit subjectively that persons of subject to the contrary.

Fourthly—That if he was not wrong in this he wrongfully took a fresh complaint, and wrongfully examined on charges contained in that and under which the prisoners are now detained is bad on its face and not sufficient in law to justify their detention.

The Curen has a right to know why any of semectively under the prevention of Justice and the prevention of the two parties respectively that persons committeness are required to two parties respectively that persons committed in the two parties respectively that persons committed in the two parties respectively that persons committed in the two parties from Justice from Justice and Jurisdiction of the two parties respectively made remained and Jurisdiction of the two parties respectively made remained and Jurisdiction of the two parties respectively made remained and Jurisdiction of the two parties respectively made remained and Jurisdiction of Justice from Just justify their detention.

The Queen has a right to know why any of respective Judges and other Magietrates of the two are alleged to be wrongfully imprisoned are so authority, upon complaint made under oath, to tame restrained of their liberty. The Writ of Habeas a "arrant for the apprehension of the fugitive or restrained of their liberty. The Writ of Habeas a "arrant for the apprehension of the fugitive or person so charged, that he may be brought before the Statute of the General Assembly under which I am now acting, are the constitutional heart and considered; and if, on such hearing, the means in this Province by which all alleged improper imprisonments are enquired into, and the Judges of the duty of the examining Judge or Her Magietry's Supreme Court and the Judges of Magietrate to certify the same to the proper executive authority, that a warrant may issue for the or offence had there been doministed; and the

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Britain in the 6th and 7th year of Her tions upon which the original Warrant was Majesty's reign passed an Act for giving granted, certified under the hand of the persect to the Treaty, which after reciting the son or persons issuing such Warrant, and 10th article of the Treaty, and the 11th with attested upon the oath of the party producing reference to the duration of this portion of them to be true copies of the original deposiit, after reciting that it is expedient that pro-tions, may be received in evidence of the crimi-vision should be made for carrying the said naity of the person so apprehended."

The authority which this statute gives the

Dominions would justify the apprehen-erless to act. sion and committal for trial of the per-son se accused if the crime of which he or she upon which P is Excellency issued his Warshall be so accused had been there committed, rant in this core. They all bear date on the it shall be lawful for such Justice of the Peace, same day, and in the absence of any evidence

urrender of such fugitive. The expenses of such aforesaid, to issue his warrant for the appreauprehension and delivery shall be borne and de hension of such person, and also to commit the party who makes the Requisition and the person so accused to Gaol, there to remain until delivered pursuant to anch requisition as aforesaid.

To enable this Treaty to be carried out in eitle as aforesaid.

2nd. Frovided always and be it enasted.

That in every such case, copies of the deposibilities in the 6th and 7th year of Her time every such case, copies of the depositions are such as a series of the deposition and the first and the first and the first and the series of the deposition and the first and t

"He it enacted, &c., That in case re-officer administering the Government of any quisition shall as any time be made by the au-Colony and all Justices of the Peace and other therity of the said United States in pursuance Magistrates and Officers of Justice within their of and according to the said Treaty, for the several jurisdictions to act being a statutary delivery of any person charged with the crime power, they must one and all act strictly in accommunder, or assault with intent to commit cordance with the authority given, and rigid-murder, or with the crime of piracy or arson, by pursue that authority. Bearing this in murder, or with the crime of piracy or arson, by pursue that authority gives, and light of robbery or forgery, or the utterance of mind I proceed to the consideration of the forged paper, committed within the jurisdiction of the United States of America, who shall the Act of Parliament, for it is from that, and the found within the territories of Her Mathat alone, the authority to act proceeds, and the sty's Principal Secretaries of State, or in statute show that the basis of this right is on treisand for the Chief Secretary of the Lord an event. "In case Requisition shall at any little that alone, the authority of the united by the authority of the United little or Possessions abroad, for the States in pursuance of and according to the said jesty's Colonies or Possessions abroad, for the states in pursuance of and according to the said officer administering the Government of any Treaty for the delivery of any personcharged such Colony or Possession, by Warrant under with (certain crimes including Piracy) commithis hand and seal to signify that such Requi- ted within the jurisdiction of the United States." sition has been so made, and to require all &c. Thus we see the Requisition is not to be a Justices of the Peace and other Magistrates simple bald request for the delivery up of the and Officers of Justice within their several person named, but it is a Kequisition which jurisdictions, to govern themselves according- must be by the authority of the U.S.—it must ly, and to aid in apprehending the person so be in pursuance of and in accordance with the accused, and committing such person to Gaol, Treaty—it must be for the delivery of a perfor the purpose of being delivered up to Jus-for the purpose of being delivered up to Jus-son charged with one of the offences mention-ties, according to the provisions of the said ed in the Treaty, and the offence with which Treaty; and thereupon it shall be lawful for he is charged must have been committed with-any Justice of the Peace or other person hav-ing power to commit for trial persons accused of crimes against the laws of that part of Her sented the statute says it shall be lawful for Majesty's Dominions in which such supposed the Administrator of the Government of any offender shall be found, to examine upon oath Colony or Possession by a Warrant under his any person or persons touching the truth of hand and seal, to signify that such requisition such charge, and upon such evidence as, accord- has been made. Deficient in any one of these ing to the laws of that part of Her Majesty's statutary requirements the Governor is pow-

or other person having power to commit as to the contrary, I may assume were laid be-

fore H lotter a which to have munic throug part of Govern Actof fender the pla mitted to Just ceeds t to His United thorize Govern as the of this (not no be guil within stating tions of any pa fore the eviden heard that, in said Ac Warin made f and of quire th Magist vince named crime o them d ing the we bar " by th is of th Had M the Un of tha would aware ' ty unl fair con Mr. He

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it enacted. the deposiarrant was of the perarrant, and producing nal deposif the crimid. e gives the nent of any and other within their a statutary ictly in acand rigiding this in tion of the closely to n that, and ceeds, and part of the

right is on hall at any the United g to the said soncharged y) commitited States." not to he ry up of the 8.—it must ce with the ry of a pers mentionwith which aitted withstates. If a nts is pre-

documents d his Wardate on the ny evidence ere laid be-

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one of these nor is powthat, in accordance with the provisions of the for having them brought to trial."

fore His Excellency at the same time, but the of their guilt or innocence may be heard and letter signed J. Q. Howard, U. S. Consul, in considered." This is all that he puts forward which the prisoners are named, would appear as to the extent of his authority, and upon to have been the first written. It is a com-this, without production of the authority, he munication addressed to the Lieut. Governor proceeds to request that His Excellency will through the Provincial Secretary. The first by Warrant signify as before stated. No aupart of this letter is simply a request that the thority from the Government of the United Governor will use his authority under the States is shown or directly alleged author-Act of Parliament "to the end that certain of izing him to ask for the apprehension of the fenders (not naming them or their crime, or individual parties he names, or to ask for the place or jurisdiction within which com- their apprehension as charged with the crime mitted) may be apprehended and delivered up committed within the jurisdiction of the to Justice" (not stating to whom). It then pro- United States, but simply of parties accused ceeds to desire the Secretary to make known of the crime of piracy, for the purpose, not of to His Excellency that, as an officer of the being delivered up under the Treaty, but for United States Government, the writer is au- the purpose of having them brought to trial. thorized by the Executive Department of that Had His Excellency issued such a Warrant Government to make a Requisition upon him as is here a ked for, I have no hesitation in as the officer administering the Government saying, for the reasons that will bereafter be of this Province, in order that certain persons given in considering another branch of this (not naming them) believed (not charged) to case, it would have been bad. Is the matter be guilty of the crime of Piracy (not stating then helped by the second letter? By this within what jurisdiction committed, and not letter the Consul transmits affidavits of the stating whether piracy against the law of na- Captain and second Mate, sworn at St. John tions or piracy against the municipal laws of before H T. Gilbert, Police Magistrate, on no any particular country) may be brought be-charge or complaint, to be presented to His fore the proper officers of Justice, so that the Excellency in case "he requires evidence of evidence of their guilt or innocence may be the criminality of the persons charged with heard and considered; and then be requests the crime of Piracy before issuing the warrant said Act of Parliament, His Excellency will by hope is then expressed that no obstacles will Warrant signify that a Requisition has been be thrown in the way of bringing those charged made for the apprehension of John C. Braine with so grave an offence to justice. If there and others, including the prisoners, and re- are deficiencies in the first, it can hardly be quire that all Justices of the Peace and other urged that they are supplied by this letter or Magistrates within the jurisdiction of this Pro- by the depositions accompanying it. His Exvince shall aid in apprehending the above cellency being one of the Commissioners named named persons accused (not charged) of the in the Royal Commission for taking informaorime of piracy, for the purpose not of having tion and apprehending and committing for them delivered up, but for the purpose of hav-trial persons charged with offences on the high ing them brought to trial. Under the statute seas, and if brought to trial, one of the Judges we have seen the Requisition must be made to try them, this letter instead of being a "by the authority of the United States," that Requisition under the statute, or in aid of a Reis of the Government of the United States quisition, if I may use the expression, more Had Mr. Howard been a public Minister of resembles an application to Hi. Excellency in the United States, and so the representative that capacity than to him und r the 6th and of that Government, a Requisition by him 7th Vic., as an officer administering the Go.would doubtless have been good; but I am not ernment, more particularly as the last ; is aaware that as Consul he has any such authori graph says; "Vie had believed until this to ty unless specially delegated. Perhaps the hour that a Requisition before the Executive fair construction of that letter would be that would not have been required in the fire in-Mr. Howard intended to convey to the Gov-stance," which would rather corroborate "e ernor that he was so specially authorized, but view that proceedings were desired, inde the authority he claims is simply "in order ent of a requisition. As to the deposition, n that certain persons be leved to be guilty of my opinion it cannot make the requisition the crime of piracy may be brought before the good if not good without it.

preper officers of Justice, so that the evidence It appears to have been sworn before Mr.

Gilbert as Police Magistrate, and was, I think, Daniel, Justice, concurred in all that Nelson on his part wholly extra judicial. No com-Justice said. And that this principle has been plaint or information sppears to have been acted on will be seen by reference to Bisset's laid before him to justify his taking the depo- case, 6 Ad., and Bl., in England, where we find aition, and if the charge of Piracy, which the a warrant was first issued in France, and to statements in it unanswered would justify, had Kane's case in the United States, just referred been made at that time before him, he had no to, where a warrant was issued in Ireland, in jurisdiction to entertain it; still less had he addition to the special authority and affidavit jurisdiction if the offence was an alleged of the Consul. In Kane's case, reported in 14 orims committed within the jurisdiction of the Howard, Mr. Barclay the British Consul was United States, and therefore amounted to no specially employed, the report says by direct legal charge, and to no legal evidence of the authority of the British Minister, accredited to crime of Piracy; but is it not absolutely nether Government of the United States, and in cessary that the parties should be charged pursuance of this authority Mr. Barclay made with the commission within the jurisdiction the necessary affidavit; and no case has been of the United States of one of the crimes men-cited to me, nor am I aware of any, where a tioned, that is legally charged judicially, or by different practice has been adopted. On the public process, or in some manner warranted contrary I find in a note to the last edition by by the laws of the country in which the al-Lawrence of Wheaton's International Law, this leged offence was committed. I think the view confirmed by the opinion of Mr. Cushing, words of the statute too clear to admit of any May 31st, 1854, in the published opinions of reasonable doubt on this point; and the 2nd the Attorneys General of the United States. section of the Act confirms me in this view volume 6, page 485. The practice is declared This Section contemplates it being done by the by him in these words:issuing of a warrant, for in providing that certain evidence may be used by the Magistrate as well as that of Great Britain, requires or officer in the investigation of the criminality that all claims of Extradition should be foundof the person apprehended, it says, "copies of ed on a judicial warrant, with proper evidence the depositions upon which the original warrant to justify the warrant. The United States will was granted &c." This obviously refers to the not, therefore, make a demand on Great Brioriginal Warrant granted in the country where tain for a person alleged to be a fugitive from the the crime was committed, and anterior to the re-justice of one of the United States without the quisition; and this view would seem to be en-exhibition of a judicial warrant issued on suffitertained by jurists of the highest celebrity in cient proof by the local authority." And again the United States, for in the judgment of Nelson. Justice, in the Supreme Court of the United States in Kane's case, as reported in 14 How-7, page 6, he says: "A mere notification from a ard, hesays: "This species of evidence is very foreign legation that a party guilty of a crime differently guarded in the Act of Parliament, 6th has escaped, and perhaps fled to the United States in Kane's case, as reported in 14 How-7, page 6, he says: "A mere notification from a foreign legation that a party guilty of a crime differently guarded in the Act of Parliament, 6th has escaped, and perhaps fled to the United and 7th Vic. There copies of the depositions laid States of America, is not sufficient to justify before the Government, and upon which the pro- the preliminary action of the President. The per officer issued his warrant to the Magistrates general rule is, the Government of which extraauthorizing them to institute proceedings to ar-dition, whether by comity only, (citing Kluber rest and commit the fugitive, are those only Sec. 66, Martin's Precis, Sec. 101) or by Treaty, permitted to be given in evidence; in other is demanded, before it is called on to act, must words, copies of the depositions upon which have reasonable prima facie evidence of the the Government acted in the metter are ad-guilt of the party, submitted to it, as well as the missable as evidence of criminality. The ordemand of the Executive authority." And iginal of these are those upon which our Gov- again vol. 8, 215 page, in another opinion of ernment make the Requisition, and of course the same, he says: "But to justify the comthe good faith of the nation is pledged that they mencement of proceeding in extradition it must are taken before competent officers, and that appear that the criminal acts charged were comthe facts stated are true." And Chief Justice mitted within the territorial jurisdiction of the Taney concurring, as he said he did, in all demanding Government." that Nelson, Justice, then said, contented him-But suppose the documents contain a charge self with expressing his entire assent to the against these prisoners, where do we find it

opinion Nelson had then just delivered; and alleged in them that the offence charged was

cable to such co sioners law: " still in created to pira nizable diction of the case to should enable Warra Officer an offer possibl ficiency of this term, a in its g raised that an States ed of admitt be con diction the Tr which the b prever urisdi that p enum should rocall It is mon l

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hat Nelson e has been to Bisset's ere we find ce, and to ust referred Ireland, in nd affidavit oorted in 14 Consul was s by direct ceredited to tes, and in rclay made e has been ny, where a d. On the t edition by al Law, this fr. Cushing, opinions of ited States. is declared overnment,

in, requires ld be foundper evidence d States will Great Britive from the without the ued on suffi-' And again gentleman, ne work, vol. eation from a y of a crime the United nt to justify sident. The which extraiting Kluber or by Treaty, to act, must ence of the s well as the

am a charge we find it harged was

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d were com-

iction of the

erested which are to be deemed to amount to piracy." All such offences would be cognizable only by tribunals having jurisnizable only by tribunals having jurisniz diction either territorially or over the person jurisdiction and authority, but that the word piracy of the offender. If it was intended in this was intended to apply to piracy in its municipal case to be used in its limited or artificial sense, acceptation, or if to piracy against the law of nashould not the requisition have shown it, to enable the Governor so to state it in his be one within the Treaty, and the Requisition to be sufficient, I proceed to consider the next obligation. Officers, without knowing whether it was such an offence as would be cognizable in our Courts Had Mr. Gilbert, either as Police Magistrate or possibly be able to enquire into the sufficiency of the evidence according to the laws ing the truth of the charge? of this Province? If it was intended to use the The terms of the Statute are that the Warrant of this Province? It it was intended to use the term, as I think it must be taken to have been, in its general sense, then the question has been raised whether inasmuch as it was not alleged that any of these parties had been in the United States along the pick seas convoluted.—and thereupon it shall be lawful for any Justice. States since the acts on the high seas complain- of the Peace or other persons having power to ed of were committed, but the contrary was commit for trial persons accused of crimes against admitted on both sides, how can the offence the laws of that part of Her Majesty's Dominions be considered as committed within the juris- in which such supposed offenders shall be found be considered as committed within the juris-in which such supposed offenders shall be found diction of the United States? The object of the Examine upon oath, &c." The words of the Statute differ from the Treaty. The words of the Statute differ from the Treaty. The words of the which is: "Whereas it is found expedient for the better administration of justice and the prevention of crime within the territories and prevention of crime within the territories and jurisdiction of the two parties respectively, that persons committing the crimes hereinnfter in insidiction of the Justices and other Magistrates." I suppose the preserve consistency in the administration of Justice. In the Treaty nothing is said as to the invisition of the Justices and other Magistrates. enumerated, and being fugitives from justice, In the Statute the Governor can only require should, under certain circumstances, be recip. Justices of the Peace and other Magistrates and officers of Justice to act within their several jurisrocally delivered up.

Britain and the United States, and by the Com- ing power to commit for trial persons accused of mon Law crimes are unquestionably considered crime, &c.,—that is, I am inclined to think, when local, cognizable and punishable exclusively in accused of crimes in the United States over which the country where they are committed; and it was the officers respectively have jurisdiction to comdoubtless to prevent the failure of Justice that mit if committed in this Province. Then in such would necessarily result from offenders in one cases they should examine on oath, and if the

committed within the jurisdiction of the United other of the countries and so made himself am States of America? The crime stated is Pi\_able to its courts and had been there legally racy. In its primary and general signification charged with the offence had field or been subscribed indicates an offence against the law of quently found within the territory of the other nations, justiciable wherever the offender may be found. In the codes of different countries to the codes of the codes of different countries to the codes of the codes of different countries to the codes of the codes be found. In the codes of different countries the person so charged. But I have great difficulty it has been arbitrarily adopted as a term appliand am as yet unable to arrive at the conclusion cable to offences against the Municipal Laws of that, when the pirate has never after committing such countries, or as expressed by the Commissioners in England in their report on the criminal tracting parties but is found in the territory of the law: "by Statutes passed at various times and other, the Government of the former can assume still in force many artificial offences have been used to be size of the control of the latter of the control of the latter of

dictions; beyond their jurisdiction then they cannot act. But the Statute says, it shall be lawful mon Law pervade the jurisprudence of both Great for any Justice of the Peace or other person havcountry seeking refuge in the other and there evidence would justify their committal here, issue being amenable to no punishment, that this their Warrant, &c.; and an insertion of the words Trenty was entered into; and it is not difficult to understand how the crime of Piracy, in its general trial" would seem unnecessary if Justices of the sense, might come within the operation of the Peace and other Magistrates could act in all cases. Treaty when a pirate having gone into one or As at present advised I am disposed to read the

terms "in their several jurisdictions" in their which the Magistrate could exercise a discretion or broad signification. 1 think it more consistent judgment, then the case would be very different ; with the scope of the Statute and the duties to be but is such the case before us? That the vessel performed that they should be considered as apply-was seized and by force taken from the Captain and ing to their judicial as well as their territorial crew on the high seas, is not disputed. Unanswerjurisdiction, it being, I think, unreasonable to suped this is a prima face case o. Piracy, and the pose that a Justice of the Peace, who cannot resume information on a charge of piracy, or examine into the truth of such charge if cognizable up is that hostlities were existing between the in this Province, should, if committed in the United States and the Confederate States of United States, determine on the sufficiency of the America, and this seizure was made under a Comwitted on the sufficiency of the America, and this seizure was made under a Comwitted case of the Province of the evidence according to the laws of this Province if mission from, or by authority and on behalf of, the the crime was committed here; or in like manner Confederate States, and that therefore it was an that the Commissioners authorized solely to receive act of legitimate warfare and not of a piratical information and commit for trial in cases of offences character. This, on the other hand, is denied, on the high seas, should deal with crimes over and it is alleged that the claim to act under the which if committed in this Province they have no authority of the Confederate States is mere pre-jurisdiction; and from this construction no possi-tence and color to disguise and cever an illegal ble difficulty can arise, because for every crime depredation. The object of privateering in general. of the Peace or other persons having power to fare but plunder and profit: but at the present commit for trial; so that in this case when it ap-day the rights of private armed vessels and private peared by His Excellency's Warrant that the belligerents cannot be doubted. Unless restrained crime charged was Piracy, Mr. Oilbert, whether by Treaty stipulations the right to commission as Police Magistrate or Justice of the Peace, not private armed vessels is, by the laws of nations, having jurisdiction over such an offence and no esteemed a legitimate means of destroying the power to commit for trial a person charged with commerce of an enemy, and captures made by Piracy, could have referred the matter to the private armed vessels of one belligarent, even Judge of the Court of Vice Admiralty, or some without a Commission, though not in self defence, other one of the Commissioners having authority are not regarded as piratical either by their own over that offence and power to commit for trial Government or by the other belligerent State. It persons charged therewith. To confine the Madocs not indeed vest the enemy's property thus gistrates and officers to their respective jurisdic seized in the captors, one the solutions is, in my opinion, in no respect to conflict clared a prize of war to the government of the istrates and officers to their respective jurisdic seized in the captors, but the seizure would be dewith any clause in the Treaty but in harmony with captors; and it is equally true that neutrals takit, and in furtherance of a proper and discreeting commissions as privateers and acting on them execution of its stipulations.

But assuming the Requisition right and that They may make themselves amenable for the the Magistrate had jurisdiction, we must consider violation of the laws of their own country, and the third Point. The question here raised was may denude themselves of the right to claim her argued as if I was sitting in the character of a protection to shield them from the consequences Court of Review or Error on the decision of the of their acts, but they cannot be dealt with by Magistrate on the facts proved before him. Such, the belligerent against whom they are acting as I think, is not the case. The duty of determining pirates. But as neutrals they stand in a very dif-on the sufficiency of the evidence is cast on the ferent position from lelligerents. Belligerents, Magistrate or other officers. He is the person to we have seen, may make captures without com be satisfied that the evidence justifies the appre-missions. Neutrals can only protect themselves mension and committal for trial of the persons by commissions from, or by acting under authority accused. The amount and value of that evidence of the belligerent Government, or on board comis for his determination. A Judge of the Supreme missioned vessels, or under duly authorized officers. Court might think the evidence of guilt strong They cannot, without any commission or authority, and of innocency weak, or vice rerea, but the fit out in a neutral country a hostile expedition law has vested the Magistrate with the power of against a power at peace with such country, and, weighing and deciding on the effect of the evidence under pretence of acting in the name of, or on the and it is the result on his mind that is to determine behalf, of a belligerent power, commit acts on the discretion with which he is vested, which, I think, ent rights, be acts of Piracy, and not be held re-is not open to question on Habrus Corpus, and sponsible criminally for such acts. And there-cannot be taken from him and assumed by a Judge fore it behoves persons not belligerents but sub-

are likewise free from the imputation of Piracy. or the Supreme Court. If it was manifestly ap-parent that the evidence showed that no offence tility, if they wish to escape the imputation of had been committed or that the party was unques-tionably innocent and therefore there was really date on the shipping of a nation at peace with the ne matter of fact or law to be tried, no matter in one to whom they owe allegiance, and in opposition to

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discretion or y different : the vessei Captain and Unanewercy, and the ification set between the e States of inder a Conichalf of, the re it was an of a piratical l, is denied, ct under the is mere preer an illegal ig ingeneral. hivalric warthe present la and private as restrained commission s of nations, stroying the res made by gerent, even self defence. y their own ut State. It roperty thus ment of the neutrals takting on them on of Piracy. able for the country, and to claim her consequences ealt with by re acting as n a very dif-Belligerents, without com t themselves der authority board comrized officers. or authority, le expedition country, and, of, or on the it acts on the d by belliger-ot be held re-

And thereents but sub-

acts of hoamputation of they depreeace with the ad in opposition to the municipal laws and neutral policy of ence where she was or under whose command when their own Government, and in direct defiance of this expedition was planned and executed, did not the express Proclamation of their Sovereign, that appear; nor was there any evidence to show that they are acting under the authority of a commission which will bear the test of a strict legal ever been on board the "Retribution" or in any secution. In the present case, can it be said that way connected with her. On the contrary, Braine, this was made out so clearly and unconvecally who would appear to have been in charge of the serutiny. In the present case, can it be said that this was made out so clearly and unequivocally who would appear to have been in charge of the that there was nething for the Magistrate to described himself on beard the liberate on—nothing for a Superior Court or Jury "Chesapeake," and was addressed by the title of, to try? Without expressing the slightest opinion of the guilt or innocence of the parties, or the probable result of a trial either before a judicial probable result of a trial either before a judicial tribunal in this Province or in the United States, but addressed an erder to "Lieutemant Commandit will only be necessary to refer generally to the evidence on behalf of the prisoners to show that che case is by no means so entirely free from doubt Parr, 2nd Lieutemant David Collins, Sailing or question as their Counsel assumed. Instead of Master Tom Sayers, one engineer and crew of showing that they were acting under a regular 22 men; engage passage on board the steamer, commission, or were belligerents themselves, or using his own discretton as to time and place of capthat the expedition proceeded from the Confeder-ture, to act towards crew and passengers in accorevidence of the nationality of the parties engaged, stances permit—bring his prize to Grand Manan that they were British subjects, that the plot to for further orders. This is signed John Parker, seize the vessel was concected in this City, that Captain C. S. Privateer "Retribution." There mission dated 27th Oct., 1862, whereby the vessel To David Collins. "Retribution," Thomas B. Power, Commander, Reposing confid was authorized to act as a private armed vessel do hereby authorize and commission you to hold for the Confederate States on the high seas against and assume the rank of 2nd Lieutenant, and this the United States, on the back of which commission is an endorsement dated 21st Nov., 1862. from me, against the Government of the United signed Thomas B. Power, whereby he transfers states, or against the Government of the United the command of the schooner "Retribution" to John Parker. The commission is proved by proof of the signature of Jefferson Davis, President of the Confederate States, and of the Seal of the Confederate States, and of the Seal of the States, or against the Government of the United States, or against the Government of the dorsement is proved by the slightest evidence of the hand-writing of the subscribing witness. Had this commission been from Jefferson Davis There is no evidence of who this John Parker it might have been easily understood and possibly was. It was proved that at Nassau a Nova free from question; but issued by a British sub-Sectian named Vernon G. Locke, who had been ject to a British subject, in the Queen's Dominresiding for the last 20 years in the United States, ions, it is certainly a proceeding, to say the least and whose family is now living at Fayetteville, of it, novel in its character and fairly challenging was last summer in the month of May at Nassau, investigation. It is true, evidence was offered of in command of the "Retribution," and that military men attached to the Confederate Army, he was there received and recognized as her Captain under the name of John Parker. Whether missioned to discharge a particular duty had, by he was really the John Parker named on the the practice of the Confederate service, authority buck of the commission, or assumed that name to appoint others under them to act as officers to with a view of representing that person, was not carry out such duty, and that such was a recognishown except as an inference might be drawn from the facts one way or the other. This commission such dustom of the service; but the practice pursued by officersunquestionably in the service of the was preduced at the Lower Cove meetings by Locke, alias Parker, but there is not a particle of in the war of the heatile territories, is not quite evidence as to the whereabouts of the "Fetribuction" at that time or since or that he was a thurstary. But he all this as it was can it he demand Captain of her. In fact, the only evidence of her at that the proceeding, if justifiable, was not, in all was her being at Nassau in May last summer. Whether she was in existence or not, or if in exist-prima facie case before the Magistrate being on

or question as their Counsel assumed. Instead of Master Tom Sayers, one engineer and crew of ate States of America, it appears, so far as there is dance with President's instructions and as circumthe commission under which they claim to act was is no evidence of what these parties were officers, not directed to any of the persons engaged in this or how or by whom they were appointed, with the capture, nor were any of them named in it, nor exception of David Collins, and he appears to did it relate in any way to seizure under circum-have got his commission of 2nd Lieutenant from stances such as the present—that it was a com-John Parker. It is in these words:

Reposing confidence in your zeal and ability, I shall be your authority for any act, under order

(Signed) JOHN PARKER.

the one hand clear, and the alleged justification transformed an affidavit intended, as the Consul presenting the irregularities and peculiarities, it says, "to be presented to His Excellency, in case did, and being open to so much question, can be required evidence of the criminalty of the perthe Justice be fairly said to have exceeded his sons charged with the crime of Piracy before discretion if the result at which he arrived decid—listing the Warrant for having them brought to at that the evidence was such as would justify trial." into a charge by Willet and Henderson of their apprehension and committed for trial had the Piracy and Murder. The valuelessness of this alleged orime been committed here, leaving the document, either as a charge or a verification, I prisoners to substantiate their defence before a have already shown; but where the allegation that competent Court where the legal points could be the alleged offences were committed in the jurisproperly determined, and where the questions of diction of the United States was obtained I am at attent and of fact or inference would be submitted a loss to concept, for neither the Consul nor to and determined by a Jury. As at present advised I cannot say that in this particular the Majority in the offence alleged must necessarily have been competent.

Before leaving this branch of the case I cannot vertible terms, though it is true this allegation is refrain from expressing my deep regret that any preceded by the averment that in pursuance of inhabitants of New Brunswick, being British sub and in accordance with the said Treaty and Act a jects, should have been seduced from their clear Requisition has been made, &c. duty to their Sovereign, and have availed them: With these exceptions the Varrant of His solves of the hospitality of a friendly power by Excellency appears to be in strict conformity going into its territory and obtaining a passage with the Statute. Mr. Gilbert's Warrant then, from one of its ports, on board one of its ships, and, as we have seen, proceeds to recite that on receipt armed crew peaceably engaged in their lawful said Warrant and upon the evidence of the said calling, and dispoiled them of the property under Willets, on the 25th of December, issued his their charge, and that too with an amount of violence resulting in the death of one of the crew, upon the said charges; and on reference to this expension of the persons lonce resulting in the death of one of the crew, upon the said charges; and on reference to this expension of the complaints.

sets out, as we have seen the Warrant of His alleges facts not before anywhere stated, namely, Excellency, which alleges the parties to be charged the registry of the vessel in the United States upon the caths of Isaac Willets and Daniel Hen- of America, that the vessel at the time of capture derson with having committed the crimes of Piracy was on the high seas about 20 miles N. N. E. of and Murder on the High Seas within the juris-Cape Cod in the United States of America, and it diction of the United States of America, on the avers a malicious, wilful, felonious and piratical 7th of December, then instant. Now where are assault on, and putting in bedily fear and danger the Governor, who, I presume, drafted the War malicious, felonious and piratical taking possession rant? Reverting to what has been said as to the of the vessel and cargo; and that they did then Requisition, not a word is alleged by the Consul and there wilfully, maliciously and feloniously of this erime of Murder, and not a statement made and violently steal take and carry away the said by him that either Piracy or Murder had been cargo; and that they did with a pistol loaded committed within the jurisdiction of the United with powder and leaden bullet shoot and felonious States. No doubt, the legal gentleman who drew ly, muliciously, wilfully and piratically kill and the Warrant felt the difficulty of the want of a murder one Orin Schaffer, the second engineer; distinct charge, and the absolute necessity of the and in the same language and manner shot at and avernment that the crime was committed within wounded in the right knee one Charles Johnson, the United States of America; but as there was chief mate; and in the same language and manner neither of these particulars in either of the letters shot and wounded in the chin James Johnson, of the Consul has no doubt from necessity, reserved chief engineer.

to the affidavit transmitted therewith of Willets Now, with all respect for the Police Manistrate, I' and Henderson, and from the facts stated by them think this was not the preper mode of proceeding

sistrate arrived at a wrong conclusion, nor do I a Requisition for an onence unless think the Magistrate did wrong in refusing to go the offence alleged must necessarily have been combained the Governor s warrar t and determine on mitted within thencessary jurisdiction. Again, this the smile on the Regulation was lency. Over that matter, I think, the Statute made on the authority of the United States but gives the Justice no jurisdiction or authority.

by a strategem possibly justifiable by the usages of this Warrant he examined Isaac Willets under of war in a belligerent, have risen against an un-oath touching the truth of the charges set forth in which, under the evidence in this case, would not amination I find it is headed: "The complaint of seem to have been necessary for the accomplish-Isaac Willets &c., taken and sworn to this 25th day ment of the end sought to be attained—an ex-of Dec., 1863, before me H. T. Gilbert &c., acting ample, I may be permitted to add, I carnestly under a Warrant under the hand and seal of the trust will not be followed by any of Her Majesty's Hon. A. H. Gordon, &c. The said Issae Willets loyal subjects in this Province.

As to the 4th objection. The Commitment first particularity the circumstances of the capture and these averments obtained by the legal adviser of of their lives, the Captain and mariners, and the

inder the er's War inder it. He sho orm of re but w Governor act, he sh in its req nstance cused wh Warrant charge t the requ commund named new com naw me rectness firmed by Victoria, the form Having commitm of the of the rant dire ADSWOR, rant, but mentione said com of a War ernor de differ fr Warrant taking parties t the word tice seco made to under th been ou 485 bein That wa vention. the san we are n
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s the Consul lency, in case y of the per-iracy before m brought to Henderson of suess of this erification, I llegation that in the jurisained I am at e Consul nor hing about it, could not be so committed ave been comn. Again, this quisition was ed States but o means cons allegation is pursuance of

aty and Act a rrant of His ct conformity Varrant then. hat on receipt Willets under es set forth in nce of the said er, issued his the persons e complaint of o this 25th day it &c., acting nd seal of the Isaac Willets en details with he capture and stated, namely. United States ime of capture es N. N. E. of merica, and it and piratical riners, and the king possession they did then nd feloniously away the said pistol loaded t and felonious ically kill and cond engineer; ner shot at and harles Johnson. age and manner ames Johnson

e Magistrate, I' e of proceeding

inder the Statute. When he received the Govern-upon the ground that as the commitment was under a rea Warrant, assuming he had jurisdiction to ack special Statutary sutherity, the terms of the commitment it he should have taken be fresh complaint, mituent must be special and exactly pursue that the should have embedded nothing in the authority, acting on and recognizing the authority orm of a complaint or charge against the prison-or Masha' case. 2 Wm. Bl. 805, where it is re but what was contained in the Warrant of the liaid days that the true distinction is that when

inder it he should have into the fresh complaint. Intusent must be special and exactly pursue that the should have embedded nothing in this authority, acting on an exemption or classified on the price of the what was contained in the Warrant of this price. It is not what was contained in the Warrant of this land down that the true distinction in this when the price of the classified have confined himself strictly within its requirements, which was simply in the first which he is punisuable by indicement, then he is makine to as fir in suprehending, the persons according to the covernor's Warrant recting the Governor's Warrant, the athority to be the word on him theory, and commanding the apprehendon of the persons are considered to the complaint of introduced new charges or any of the confidence of the variety and the forms there given.

Having so examined that Act S and S and Commitment recites that upon the of the Act of Assembly, he issued his Warrant for the complaint of lease will succeed in the sand of the Act of Assembly, he issued his Warrant for the complaint of lease will succeed in the sand of the covernot was an example of the covernot was an examp

diction should appear to the tee of their good as Licuit, Claraman granted his

objection to this Warrant. This is the final commitment of the accused to Jail, there to remain until delivered pursuant to the Requisition. But after examination of the witnesses, and before the committal, there was something to be done, an all intradiction shall receive a strict construction. Nash's case 4th E. and A. 295, was the case of a committal, there was something to be done, an all intradiction shall receive a strict construction. Nash's case 4th E. and A. 295, was the case of a committal, there was something to be done, an all warrant issued under the 57th George 3d, Cap. important duty to be discharged, which I cannot 87 Sec. 5, by which Act, in case any person, found discover from the Warrant or from any of the proceedings before me, and I can look to nothing else is going a vessel liable to forfeture under 45 could be some performed, and which, if done, I have been performed, and which, if done, I Majesty in his naval service, he shall upon such thisk should clearly, unequivocally and unambiguously appear on the face of Warrant, which it is required, be committed by such Justice to prison manifestly does not; and that is, that after hearing to answer such information and abide such judg and considering the evidence, the Justice determined and adjudicated that he deemed the same sufficient according to the laws of this Province to justify the apprehension and committal for trial upon the revenue, but at the same time, inasmuch of the prisoners, if the crime had been committed as it trenches very strongly on the liberty of within this Province. Without such an adjudication the subject, we must take care that its previsions tion, the Warrant of Commitment could not issue, and without such an adjudication appearing cumstances stated in the introductory part of this on the face of it when issued, I think the Warrant return seem to me quite sufficient to warrant this bad, there being without it a want of jurisdiction was a subject, we must take care that its previsions too, the face of it when issued, I communes by reservance to 8 and 9 vis., before referred to, for even there where a statutary form is hagistrate to commit depend on the proof before
given to be used by the Police Magristrate of the
Metropolis, the adjudication is ast forth. The
form given is thus: "Be it remembered
pursued." And in Christy es Unwin, 11 Ad.
that'on &c., A. B. &c., is brought before me J. P.
and El. 377, where the validity of an order made
to, and is charged before me for that he, the said
that on &c., A. B. &c., is brought before me, J. P.
and El. 377, where the validity of an order made
to, and is charged before me for that he, the said
that on &c., A. B. &c., is brought before me, J. P.
and El. 377, where the validity of an order made
to, and is charged before me for that he, the said
that on &c., A. B. &c., is brought before me, J. P.
and El. 377, where the validity of an order made
that on &c., and the said and the said
that of America did there state the offence); and
foresmuch as it has been shown to me upon such
evidence as by Law is sufficient to justify the
consmittal to Jail of the said a. B. pursuant to an
Act passed in the 7th year of the Beign of Her
Majerty entitivited ko., that the said A. B. is guilty
he will quote. In Be Peerless I Q. B. 182. This was
to bring himself within the terms of the Statute
lay down the principle very clearly, some of which
I will quote. In Be Peerless I Q. B. 182. This was
a Warrant setting forth a conviction— Demman
C. J. says "The Magristrate having no jurisdiction
C. J. says "The Magristrate having no jurisdiction
which a good Warrant might be framed, but I
think this Warrant clearly bad for not always
I found myself on Lord Tenderden's Judices
have jurisdiction." "I what, way it is that, Justices
have jurisdiction." "I what, way it is that, Justices
have jurisdiction." "I what, way it is that, Justices
have jurisdiction." "I want to support the form of the case the most curvality of an point, and I
found myself on Lord Tenderden's Judices
in the warrant clearly bad for not alway diction should appear on the face of their pro-the Lieut. Governor granted his warrant, and in

ination of ubordinate arry out napective Breat Brite ult of my eve, in co he United vould com rnment: lease mu ifference. o my Sove nd to my ully, to the lally, to controlly regularity.

This I

he determi acts of the tates can

the determination of the Police Magistrate on the lots of the case, the Government of the United forth, the proceedings before me, and the warrant tates cannot fail. I think, to discern the determination of the Queen's Representative and Her subordinate officers faithfully and honorably to the array on the Treaty entered into between the desired of commitment; returned to me by the Sheriff of the City and County of Saint Johr, do not justify the appetive Governments of the United States and Great Britain; and the present decision, the result of my own judicial convictions, being, I believe, in conformity with the legal authorities of the United States, individually I might hope it would commend itself to the United States Government; but whomsoever it may please or displease must be to me, judicially, a matter of indifference. The only duty I have to discharge is only Sovereign, to the people of this Province, and to my own conscience. That duty is, faithally, to the best of my humble abilities, imparially, to declars the Law as I believe it to be, wholly regardless of consequences.

This I have honestly endeavored to do, and the attled priscreate new nstruction. reon, found o under 45 serve His upon such r aforesaid, ce to prison such judg his Act of rge 8. Cap. e, inasmuch e liberty of previsions these cirwholly regardless of consequences.

This I have honestly endeavored to do, and the part of this d upon due the prison-ght it sufpower of the proof before ed authority een strictly rin, 11 Ad.

the order s. However tutary powthe Statute The facts

order made George 4th. as held that hatever wes Coloridge, J.

for judicial d as pointe d I may say nt chara ed to give tion, and in on becoming ters, I have ight, though he charge of ts and facts the matter pefore me, or its, correctly the remone rived.

Breellency rant, and in